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Tracie Sales

Rivers & Lakes Programs
Manager, NHDES

Kathy Black

Rivers & Lakes Programs
Assistant, NHDES

N.H. Rivers Management and Protection Program

N.H. Rivers Management Advisory Committee

April 20, 2018

Mary Ann Tilton

NH Department of Environmental Services

29 Hazen Drive

Concord, NH 03302

RE: Proposed Wetlands rules Env-Wt 100-900

Dear Ms. Tilton:

The Rivers Management Advisory Committee (RMAC) appreciates the opportunity to comment on the proposed changes to the Wetlands rules, Env-Wt 100-900. This letter reflects the initial findings and recommendations to the proposed rules. The RMAC has formed a workgroup to study the proposed rules changes and will provide additional comments as the rulemaking process proceeds.

The RMAC supports the proposed pre-application process described in Env-Wt 311.01(f) whereby applicants proposing to work within a designated river corridor send permit application materials, including plans, to the appropriate Local River Management Advisory Committee (LAC) at least 30 days prior to submitting the application to NHDES. The additional requirement for applicants to include the LAC's comments with the application allows time for these volunteer based groups, which meet at most once per month, to review the application and conduct a site inspection if needed. The term "draft copy" in this rule will need to be clarified, either in rule or on the application form, to ensure that LACs receive a final draft of the plans, such that the only plan changes allowed are those requested by the LAC, the conservation commission, or NHDES.

The RMAC recommends that Outstanding Resource Waters, as defined in Env-Wq 1700, be added to the definition of "Special resource area" in Env-Wt 103.58. These surface waters have been deemed as deserving of additional water quality protection, and the Wetlands rules should support and compliment New Hampshire's water quality standards.

The RMAC objects to the exclusion of LACs from the review and comment process for expedited permit application, including those for small motor mineral dredging (SMMD). Any wetland activity in or near a designated river, particularly one which does not qualify as low or minimum impact, has the potential to impact a designated river. This is especially true of SMMD, which purposely disturbs the river bottom, destroys fish spawning habitat, and creates turbidity in the water. By law, LACs are required "To consider and comment on any federal, state, or local governmental plans to approve, license, fund, or construct facilities or applications for permits, certificates, or licenses, that may alter the resource values and characteristics for which the river or segment is designated" [RSA 483:8-a III(b)]. Env-Wt 310 should include permit application requirements similar to those for standard dredge and fill permits,

described in Env-Wt 311.01(f), whereby LACs are sent an expedited or SMMD permit application at least 30 days prior to the application's submission to NHDES, and the application must include the LAC's comments.

The RMAC notes that inconsistencies relative to activities allowed in designated river corridors exist both within the various sections of the rules and between the rules and the Routine Roadway Maintenance BMP manual that need to be addressed. For example, the proposed rules do not allow routine roadway maintenance activities within 1,320 feet of a designated river while the BMP manual restricts these activities within only 250 feet of a designated river. Further details of these inconsistencies will be submitted by NHDES Rivers Program staff.

Finally, the RMAC is concerned that the Routine Roadway Maintenance BMP manual is being revised at the same time as the rules. Because the rules reference the BMP manual, the RMAC strongly recommends that the final, approved *Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire* be published before the official Env-Wt 100-900 Initial Proposal public comment period begins. This will allow the RMAC and the public to more accurately understand what activities will be allowed under a Routine Roadway notification.

The RMAC is a legislatively created body charged to work with the New Hampshire Department of Environmental Services (NHDES) to administer RSA 483, the Rivers Management and Protection Program. The Governor and Council appointed Committee is composed of representatives from business, agriculture, hydroelectric, municipal government, water supply, conservation, recreation, fish and game, and historical interests. Among its responsibilities, the RMAC is charged with advising the NHDES commissioner, state agencies, and the general court on activities relevant to the implementation of the Program.

In conclusion, the RMAC supports the pre-application submission of project plans to LACs, recommends adding outstanding resources waters to the definition of special area of concern, but notes that inconsistencies within and between the rules and the Routine Roadway BMP manual must be addressed. Thank you for the opportunity to comment.

Should you have any questions regarding our recommendations, please feel free to contact me at 603.796.2615 or MLT@naturesource.net.

Sincerely,



Michele L. Tremblay
Chair

ec: RMAC Representatives
Robert R. Scott, Commissioner, NHDES
Eugene Forbes, Director, Water Division, NHDES
Tracie Sales, Rivers and Lakes Programs Manager, NHDES
Local River Management Advisory Committee Chairs